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Russell Skinner, and former Maricopa County Sheriff Paul Penzone*

12
13 **IN THE UNITED STATES DISTRICT COURT**
14
15 **FOR THE DISTRICT OF ARIZONA**

16 Debra Morales Ruiz, et al.,

17 NO. CV-23-02482-PHX-SRB (DMF)

18 Plaintiff,

19 **MOTION TO DISMISS**

20 vs.

21 Maricopa County, et al.,

22 Defendants.

23
24 Defendants Maricopa County, Struble, Crutchfield, Dimas, Hawkins, Hertig,
25 Martin, Montano, Moody, Park, Smith, Chester, Rainey, and Marsland, Maricopa County
26 Sheriff Russell Skinner,¹ and former Maricopa County Sheriff Paul Penzone move under

27
28 ¹: Former Sheriff Penzone is sued in his individual and official capacities. (Doc.
7, ¶ 14.) Pursuant to Federal Rule of Civil Procedure 25(d), Maricopa County Sheriff
Russell Skinner gives notice that he has been appointed as the successor to Maricopa

1 Federal Rule of Civil Procedure 12(b)(6) and District of Arizona Local Civil Rule 12.1
 2 to dismiss this lawsuit. Alexander Chavez committed suicide in the Maricopa County
 3 Jail. In essence, without any detailed factual support, this Amended Complaint asserts
 4 that every deputy sheriff working in Mr. Chavez's housing area violated his constitutional
 5 rights and acted negligently, and that all were improperly trained and supervised. These
 6 vague and unspecific allegations do not support these section 1983 and state-law claims.
 7 For this reason, and the other reasons discussed herein, this Amended Complaint should
 8 be dismissed.

9 **I. Alleged Facts**

10 Alexander Chavez was arrested and housed at Maricopa County's Lower Buckeye
 11 Jail on August 5, 2022. (Doc. 7, ¶¶ 2,6.) It appears that Mr. Chavez was placed into the
 12 jail's opiate withdrawal protocol. (*Id.* ¶¶ 60, 66.) On August 5, 2002, in what Plaintiffs
 13 characterize as a suicide attempt rather than an overdose, Mr. Chavez was found with
 14 over 250 fentanyl pills. (*Id.* ¶ 41.) He was taken to the hospital, where he told the
 15 attending physician that he had snorted 7 fentanyl pills. (*Id.* ¶ 42.) After release from the
 16 hospital he was placed back in the general population and not placed on suicide watch.
 17 (*Id.* ¶ 51.) On August 8, 2022 at approximately 1825 hours Mr. Chavez was found hanged
 18 in his cell by a deputy sheriff during a security walk. (*Id.* ¶ 78, 96.) Plaintiffs allege that
 19 the 1800-hour security walk was not done. (*Id.* ¶¶ 99,100.) Phoenix Fire personnel arrived
 20 at approximately 1837 and took over CPR and rescue attempts that had been undertaken
 21 by jail staff. (*Id.* ¶ 107.) He was brought to the hospital and died from his injuries on
 22 April 12, 2022. (*Id.* ¶¶ 79, 109.)

24
 25
 26 County Sheriff Paul Penzone, effective February 8, 2024, and as such, he is automatically
 27 substituted for former Sheriff Paul Penzone in this action for all official capacity
 28 claims. To the extent there are any remaining individual claims against Penzone, Paul
 Penzone will remain as a properly named Defendant for those claims only.

1 **II. Argument**

2 **A. Legal standard**

3 To avoid dismissal under Rule 12(b)(6), a plaintiff must allege “enough facts to
 4 state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550
 5 U.S. 544, 547 (2007). “A claim has facial plausibility when the plaintiff pleads factual
 6 content that allows the court to draw the reasonable inference that the defendant is liable
 7 for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 674 (2009). In analyzing
 8 whether a claim has facial plausibility, “we accept as true all well-pleaded allegations of
 9 material fact, and construe them in the light most favorable to the non-moving party.”
 10 *Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998 (9th Cir. 2010). In reviewing a Rule
 11 12(b)(6) motion, a trial court need not accept as true “conclusory statements” or “legal
 12 conclusions,” *Iqbal*, 556 U.S. at 678, nor must it draw “unreasonable inferences” or
 13 “unwarranted deductions of fact,” *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988
 14 (9th Cir. 2001).

15 **B. The Count I section 1983 claims should be dismissed.**

16
 17 **1. Supervisors CHS Director Struble and CHS Medical Director
 Crutchfield should be dismissed.**

18
 19 Defendant Struble is the CHS Director. (Doc. 7, ¶ 28.) Defendant Crutchfield is
 20 The CHS Medical Director. (*Id.* ¶ 27.) The allegations against Director Struble is that she
 21 placed Mr. Chavez in the CHS opiate protocol and prescribed medicines, but not all
 22 medications were given (*Id.* ¶¶ 67-69.) There are no allegation that Director Struble is
 23 somehow responsible for these missed medications.

24 The First Amended Complaint (“FAC”) also alleges that both Director Struble and
 25 Medical Director Crutchfield are “charged with implementing and maintaining policies
 26 and procedures at CHS and its facilities[.]” (*Id.* ¶ 83.) It further alleges that they are
 27 “required to review employee actions regularly to ensure CHS policies and procedures
 28

1 are being followed.” (*Id.*) And that their “lack of proper oversight at the Jail led directly
 2 to lax behavior by Maricopa [County], MSCO, and CHS staff.” (*Id.* ¶ 84.) These
 3 allegations do not support a constitutional claim.

4 There is nothing improper about placing Mr. Chavez, an opioid user (*id.*, ¶ 60), in
 5 the opiate protocol. That Director Struble and Medical Director Crutchfield are
 6 responsible for implementing and maintaining CHS policies and procedures does not
 7 impose liability for CHS employees’ actions. *See Lemire v. California Dep’t of Corrs. &*
8 Rehab., 726 F.3d 1062, 1074 (9th Cir. 2013) *overruled on other grounds by Castro v.*
9 Cty. of Los Angeles, 833 F.3d 1060, 1076 (9th Cir. 2016)) (stating that vicarious liability
 10 may not be imposed on a supervisory employee for the acts of their subordinates in an
 11 action brought under § 1983). To the extent that this can be construed as failure to train
 12 or failure to supervise claim, there are no allegations that Director Struble or Medical
 13 Director Crutchfield trained or supervised any of the CHS employees involved with Mr.
 14 Chavez.

15 Additionally, a “failure to train” or “failure to supervise” theory can be the basis
 16 for a supervisor’s liability under § 1983 in only limited circumstances, such as where the
 17 failure amounts to deliberate indifference. *City of Canton v. Harris*, 489 U.S. 378, 387-
 18 90 (1989). To establish a failure-to-train/supervise claim, a plaintiff must show that “‘in
 19 light of the duties assigned to specific officers or employees, the need for more or
 20 different training [or supervision] [was] obvious, and the inadequacy so likely to result
 21 in violations of constitutional rights, that the policy-makers...can reasonably be said to
 22 have been deliberately indifferent to the need.’” *Clement v. Gomez*, 298 F.3d 898, 905
 23 (9th Cir. 2002) (quoting *Canton*, 489 U.S. at 390). Plaintiff has alleged no facts to support
 24 any claim that the need for more or different training or supervision was obvious, and the
 25 inadequacy so likely to result in violations of constitutional right. The Count I individual
 26 capacity § 1983 claim should therefore be dismissed against CHS Director Struble and
 27 CHS Medical Director Crutchfield.

1
2 **2. Supervisors Penzone and Smith should be dismissed.**

3 Plaintiff makes the identical claims against former Maricopa County Sheriff
 4 Penzone and MSCO Captain Brandon Smith, alleging inadequate oversight, training, and
 5 supervision of the jail and sheriff's deputies. (Doc.7, ¶¶ 13,14, 82, 84.) there are no
 6 allegations that former Sheriff Penzone and Captain Smith had any interaction with Mr.
 7 Chavez, and they are not responsible for the actions of their employees. *Lemire*, 726 F.3d
 8 at 1074. And like the claims against Directors Struble and Crutchfield, there are no facts
 9 alleged to support a failure-to-train or failure-to-supervise claim. *Clement v. Gomez*, 298
 10 F.3d at 905. The Count I individual capacity § 1983 claim should therefore be dismissed
 11 against former Maricopa County Sheriff Penzone and Maricopa County Sheriff Office
 12 ("MCSO") Captain Brandon Smith.²
 13

14 **3. There are no allegations that Defendants Marsland, Rainey and**
 15 **Chester did anything improper.**

16 The allegations against Defendants Marsland and Rainey are that they completed
 17 Mr. Chavez's intake documents (doc. 7, ¶ 38), and that the intake documents properly
 18 classified him as "Psychiatric" (*id.* ¶ 37.) The FAC also alleges that Rainey and Chester
 19 noted that they gave Mr. Chavez a suicide prevention form (*id.* ¶¶ 46-47). There is
 20 nothing improper about these actions, there are no facts alleged that these non-medically
 21 trained deputies had the ability to place an inmate on suicide watch, and no allegation
 22 that supplying a flyer somehow led to a constitutional deprivation. *See Rizzo v. Goode*,
 23 423 U.S. 362, 373-75 (1976) (holding that, to state a claim under section 1983, a plaintiff
 24

25
 26 ² Plaintiffs' counsel has recently been advised that that the MCSO supervisor
 27 overseeing shifts, walks, headcounts and other related tasks is Captain Calvin King, not
 28 Captain Brandon Smith. A substitution has not yet occurred. Nonetheless, for purposes
 of this Motion, the arguments would be the same whether the Defendant was Captain
 King or Captain Smith.

1 must show a causal connection or link between the actions of the defendants and the
 2 deprivation alleged to have been suffered by the plaintiff). Nor is it reasonable to infer
 3 from this allegation that Rainey and Chester knew anything about Mr. Chavez's fentanyl
 4 ingestion. The flyer could have been given to him before he took the pills and/or the flyer
 5 could be given to everyone booked into the jail.

6 The FAC further alleges that Rainey had Chavez sign a waiver form refusing
 7 Administrative Housing, asserting that they put an opiate addict who had just
 8 attempted to end his life in general population. (Doc 7, ¶¶ 53-54.) Regardless of what the
 9 form said, there is no allegation that Rainey made the decision to transfer him and
 10 therefore no facts alleged that his conduct caused a constitutional deprivation. *See Rizzo*,
 11 423 U.S. at 373-75. Defendants Marsland, Rainey and Chester should therefore be
 12 dismissed from the Count I federal claim.
 13

14 **4. There are no facts alleged to support a § 1983 against these**
 15 **Defendants.**

16 In order to recover for injuries suffered by a pre-trial detainee while in custody, a
 17 plaintiff "must show that the prison official acted with 'deliberate indifference.' " *Castro*,
 18 833 F.3d at 1067-68. The elements of a Fourteenth Amendment failure-to-protect claim
 19 are: "(1) The defendant made an intentional decision with respect to the conditions under
 20 which the plaintiff was confined; (2) Those conditions put the plaintiff at substantial risk
 21 of suffering serious harm; (3) The defendant did not take reasonable available measures
 22 to abate that risk, even though a reasonable officer in the circumstances would have
 23 appreciated the high degree of risk involved—making the consequences of the
 24 defendant's conduct obvious; and (4) By not taking such measures, the defendant caused
 25 the plaintiff's injuries." *Id.*, 833 F.3d at 1071. "With respect to the third element, the
 26 defendant's conduct must be objectively unreasonable, a test that will necessarily 'turn
 27 on the facts and circumstances of each particular case.' " *Id.* (quoting *Kingsley v.*
 28

1 *Hendrickson*, 576 U.S. 389, 396 (2015)). The third element is “more than negligence but
 2 less than subjective intent -- something akin to reckless disregard.” *Id.*

3 Here, the FAC alleges that Defendants Smith, Moody, Dimas, Park, Magat,
 4 Hawkins, Montano, Dailey, Martin, Hertig, and Espinoza “had a responsibility to ensure
 5 the safety and well-being of Chavez. Each of them could have-at any time-classified
 6 Chavez as needing to be under suicide watch.” (Doc. 7, ¶¶ 88, 89.) Also alleged is that
 7 they could have done a “proper headcount at the proper intervals.: (*Id.* ¶ 91.) And that
 8 “They did not.” (*Id.* ¶¶ 90, 92.) There are no factual allegations that these non-medically-
 9 trained deputies had the ability to place an inmate on suicide watch or to treat him for
 10 withdrawal symptoms. There are also no factual allegations that any of these deputies
 11 had any knowledge that Mr. Chavez was suicidal.

12 To state a § 1983 claim the Plaintiff has to allege facts that each of these
 13 Defendants made an intentional decision with respect to the conditions under which Mr.
 14 Chavez was confined; (2) that those conditions put Mr. Chavez at substantial risk of
 15 suffering serious harm; (3) the defendant did not take reasonable available measures to
 16 abate that risk, even though a reasonable officer in the circumstances would have
 17 appreciated the high degree of risk involved—making the consequences of the
 18 defendant's conduct obvious; and (4) that by not taking such measures, the defendant
 19 caused Mr. Chavez's death. *Iqbal*, 556 U.S. at 674; *Rizzo*, 423 U.S. at 373-75; *Castro*,
 20 833 F.3d at 1071. All that is alleged here is that all of these Defendants worked at the jail
 21 on the day of Mr. Chavez's death and could have classified him as needing to be under
 22 suicide watch. (Doc. 7, ¶¶ 88, 89.) That is insufficient to state a valid § 1983 claim and
 23 therefore Count I should be dismissed against Defendants Smith, Moody, Dimas, Park,
 24 Magat, Hawkins, Montano, Dailey, Martin, Hertig, and Espinoza.

1 **5. Simply missing a cell inspection does not support a constitutional
2 claim.**

3 The FAC similarly broadly alleges that Park, Magat, Hawkins, Espinoza, and
4 Moody “conducted patrols and headcounts on the day of Chavez’ death.” (Doc. 7, ¶ 95.)
5 It further alleges that Mr. Chavez was found at 1825 hours and that there was no log entry
6 showing an 1800-hour security check. (*Id.* ¶¶ 96-100.) The FAC then concludes that if
7 any of Smith, Moody, Dimas, Park, Magat, Hawkins, Montano, Dailey, Martin, Hertig,
8 and Espinoza had properly performed their duties, Chavez would have been observed at
9 1800 hours and would have been stopped from attempting suicide.” (*Id.* 102.) Initially,
10 these allegations are inconsistent: it alleges that Park, Magat, Hawkins, Espinoza, and
11 Moody conducted patrols and headcounts on the day of Chavez’ death while also alleging
12 that all of the deputies on duty that day failed to perform a headcount. (*Compare* doc. 7,
13 ¶ 95 *with* doc. 7, ¶ 102). Because there is no allegation that deputies Smith, Dimas,
14 Montano, Dailey, Martin, Hertig conducted patrols and headcounts on the day of Chavez’
15 death, they cannot be constitutionally liable for failing to conduct a patrol or headcount.
16 Like the group claim that all of the deputies working on the day of Mr. Chavez’s death
17 are liable, the generalized group claim that all of the deputies that conducted patrols and
18 headcounts on the day of Chavez’ death is insufficient to state a valid § 1983 claim. It
19 does not allege specific facts that a specific Defendant’s actions caused a constitutional
20 deprivation. *See Iqbal*, 556 U.S. at 674; *Rizzo*, 423 U.S. at 373-75; *Castro*, 833 F.3d at
21 1071. Any Count I claim that Park, Magat, Hawkins, Espinoza, and Moody are liable
22 because one if them missed the 1800-hour headcount should therefore be dismissed.
23

24 Additionally, “in a § 1983 action, the plaintiff must . . . demonstrate that the
25 defendant’s conduct was the actionable cause of the claimed injury.” *Harper v. City of*
26 *Los Angeles*, 533 F.3d 1010, 1026 (9th Cir. 2008). “To meet [§ 1983’s] causation
27 requirement, the plaintiff must establish both causation-in-fact and proximate
28 causation.”, 533 F.3d at 1026. “Without [such] caus[ation], there is no section 1983

1 liability.” *Chaudhry v. Aragon*, 68 F.4th 1161, 1169–70 (9th Cir. 2023) (quoting *Van Ort*
 2 *v. Est. of Stanewich*, 92 F.3d 831, 837 (9th Cir. 1996)).

3 The FAC’s allegation that had a deputy properly performed their duty, “Chavez
 4 would have been observed at 1800 hours and would have been stopped from attempting
 5 suicide” (*id.* ¶ 102) is an unreasonable inference, an improper conclusion, or an
 6 unwarranted deduction of fact Chavez could have just as easily committed suicide five
 7 minutes after an 1800-hour cell headcount. Plaintiff has not alleged the required
 8 causation-in-fact or proximate causation here. Any Count I claim that Park, Magat,
 9 Hawkins, Espinoza, and Moody are liable because one of them missed the 1800-hour
 10 headcount should therefore be dismissed for lack of causation/proximate cause.
 11

12 **6. Maricopa County should be dismissed as no *Monell*-based claims
 13 are alleged and it is not responsible for the actions of former
 14 Sheriff Penzone.**

15 Municipalities, such as the County, are only liable under § 1983 based on deficient
 16 policies, or pervasive practices or customs, which were the moving force behind the
 17 constitutional violation. *See Monell v. N.Y.C. Dep’t of Soc. Servs.*, 463 U.S. 658, 690
 18 (1978). “To establish municipal liability under *Monell* [a plaintiff] must prove that (1)
 19 [she was] deprived of a constitutional right; (2) the municipality had a policy; (3) the
 20 policy amounted to deliberate indifference to [her] constitutional right; and (4) the policy
 21 was the moving force behind the constitutional violation.” *Lockett v. Cnty. Of L.A.*, 977
 22 F.3d 737, 741 (9th Cir. 2020) (internal citation omitted). There are no allegations that
 23 any County/MCSO policy was deficient, or that there was an improper custom or
 24 practice. Further, even if policies or practices were deficient, there is no § 1983
 25 liability unless it is established that there is some pattern of problems to put the County
 26 on notice of any constitutional deficiency. *See Christie v. Iopa*, 176 F.3d 1231, 1240 (9th
 27 Cir. 1999)(“Deliberate indifference is a stringent standard of fault, requiring proof that a
 28 municipal actor disregarded a *known or obvious* consequence of his action.”) (emphasis

1 in original) (internal quotations omitted). Maricopa County therefore should be dismissed
2 from the Count I § 1983 claim.

3 Plaintiff is also arguably making a failure to train or failure to supervise claim
4 against the County³, but they fail for similar reasons.

6 A plaintiff pursuing liability based on a failure to train or supervise must
7 allege that the municipality exhibited “deliberate indifference to the rights
8 of persons’ with whom those employees are likely to come into contact.”
Lee v. City of Los Angeles, 250 F.3d 668, 681 (9th Cir. 2001) (citation
omitted).

“[D]eliberate indifference” is a stringent standard of fault, requiring proof that a municipal actor disregarded a known or obvious consequence of his action.” *Bd. of Cnty. Comm’rs of Bryan Cnty., Okl. v. Brown*, 520 U.S. 397, 410 (1997). It may be shown if “the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers of the city can reasonably be said to have been deliberately indifferent to the need.” *City of Canton, Ohio v. Harris*, 489 U.S. 378, 390 (1989). Additionally, “[a] pattern of similar constitutional violations by untrained employees is ‘ordinarily necessary’ to demonstrate deliberate indifference for purposes of failure to train.” *Connick v. [Thompson*, 563 U.S. 51, 62 (2011)] (quoting *Bd. of Cnty. Comm’rs*, 520 U.S. at 409). This requires a plaintiff to show that “policymakers were on actual or constructive notice that a particular omission in their training program causes … employees to violate citizens’ constitutional rights,” but chose not to remedy the omission. *Id.* at 61. “Without notice that a course of training is deficient in a particular respect, decisionmakers can hardly be said to have deliberately chosen a training program that will cause violations of constitutional rights.” *Id.* at 62.

²³ CHS Director Struble, CHS Medical Director Crutchfield, former Sheriff
²⁴ Penzone, and Captain Smith are sued in their official capacity (doc. 7, ¶¶ 13, 14, 27,
²⁵ 28) and failure- to-train and failure-to-supervise allegations are asserted against them
²⁶ (*id.* ¶¶ 82, 83, 150, 151). This could potentially be construed as failure-to-train and
²⁷ failure-to-supervise claim against the County. “A suit against a governmental officer in
his official capacity is equivalent to a suit against the governmental entity itself.” *Larez*
v. City of Los Angeles, 946 F.2d 630, 646 (9th Cir. 1991).

1 Notably, “[a] municipality's culpability for a deprivation of rights is at its
 2 most tenuous where a claim turns on a failure to train.” *Id.* at 61.
 3

4 Ames v. City of Tempe, 2021 WL 5578868, at *5 (D. Ariz. Nov. 29, 2021). There
 5 is no deliberate indifference here as Plaintiff has not alleged a pattern of similar
 6 constitutional violations to put the County on notice that training or supervision has been
 7 deficient. Maricopa County should therefore be dismissed from the Count I § 1983 claim.
 8

9 Finally, the FAC alleges that Maricopa County is “responsible for the actions or
 10 inactions of Penzone” for § 1983 liability. (Doc. 7, ¶ 144.) It is not. *Taylor v. List*, 880
 11 F.2d 1040, 1045 (9th Cir. 1989) (“There is no respondeat superior liability under §
 12 1983.”) Maricopa County should therefore be dismissed from the Count I § 1983 claim.
 13

14 **7. The individual Defendants have qualified immunity from damages.**

15 Should the Court conclude that the FAC states a claim against these individual
 16 Defendants, it should still be dismissed because they have qualified immunity from
 17 damages.
 18

19 When evaluating an assertion of qualified immunity, “a court considers whether
 20 (1) the state actor's conduct violated a constitutional right and (2) the right was clearly
 21 established at the time of the alleged misconduct.” *Gordon v. Cnty. of Orange* 6 F.4th
 22 961, 967-68 (9th Cir. 2021). “Either question may be addressed first, and if the answer
 23 to either is ‘no,’ then the state actor cannot be held liable for damages.” *Id.* at 968. “In
 24 the Ninth Circuit, we begin [the clearly established] inquiry by looking to binding
 25 precedent. If the right is clearly established by decisional authority of the Supreme Court
 26 or this Circuit, our inquiry should come to an end.” *Moore v. Garnand*, 83 F.4th 743, 750
 27 (9th Cir. 2023) (quotation marks and citation omitted, alteration in the original). “There
 28 need not be a case directly on point for a right to be clearly established, [but] existing
 precedent must have placed the statutory or constitutional question beyond debate.”
Simmons v. G. Arnett, 47 F.4th 927, 934 (9th Cir. 2022) (quotation marks and citation

1 omitted, alteration in original). “The plaintiff bears the burden of proving that the right
 2 allegedly violated was clearly established at the time of the violation.” *Id.* at 934-35.

3 The Supreme Court has repeatedly “reiterate[d] the longstanding principal that
 4 ‘clearly established law’ should not be defined at a high level of generality.” *See White*
 5 *v. Pauly*, 580 U.S. 73, 79 (2017) (internal citations and quotations omitted “Except in the
 6 rare case of an ‘obvious’ instance of constitutional misconduct … [p]laintiffs must identify
 7 a case where an officer acting under similar circumstances as defendants was held to
 8 have violated” the constitution. *Sharp v. Cnty. of Orange*, 871 F.3d 901, 911 (9th Cir.
 9 2017) (emphasis in original) (internal brackets omitted).

10 Here, there are no allegations that any of these Defendants knew, or even should
 11 have known, that Mr. Chavez was a suicide risk. There is no Supreme Court or Ninth
 12 Circuit authority clearly establishing that jail staff can be constitutionally liable for an
 13 inmate’s suicide when they had no knowledge that the inmate was a suicide risk. There
 14 are also no factual allegations that these non-medically-trained deputies should have
 15 placed Mr. Chavez on suicide watch when he demonstrated no behavior to them
 16 warranting such an action. There is no Supreme Court or Ninth Circuit authority clearly
 17 establishing that jail staff can be constitutionally liable for an inmate’s suicide when they
 18 are not medically-trained and did not witness any behavior alerting them of a possible
 19 suicide risk. For example in *Regal v. Cnty. of Santa Clara*, 2023 WL 7194879, at *4
 20 (N.D. Cal. Oct. 31, 2023), the court denied an assertion of qualified immunity ruling that:

22 This Court agrees with Plaintiffs that *Conn*, *Castro*, and *Gordon I* in
 23 combination clearly established prior to 2020 that pretrial detainees
 24 have a Fourteenth Amendment right to be housed with reasonable
 25 measures in place to abate *a known risk of suicide*. In 2020, the Ninth
 26 Circuit expressly recognized that *Conn* and its other precedents
 27 clearly established an inmate’s constitutional right to have jail
 28 officials respond to “a clear warning that [the inmate] presented an
 imminent suicide risk.” *See NeSmith v. Olsen*, 808 F. App’x 442, 445

1 (9th Cir. 2020).

2 *Id.* (emphasis added). While Plaintiff characterizes Mr. Chavez's taking of fentanyl as a
 3 suicide attempt, rather than an accidental overdose (doc. 7, ¶¶ 41,42), there are no
 4 allegations that any of these Defendants knew of this incident or witnessed any behavior
 5 which would have alerted Mr. Chavez as a suicide risk. All of the individual Defendants
 6 therefore have qualified immunity from damages.
 7

8 **C. The State-law claims in Counts II, II, IV and V should be dismissed.**

9 **1. There are no facts alleged to support the Count II, III, and IV**
 10 **state-law claims.**

11 Under the rule of *Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938), "federal courts
 12 sitting in diversity jurisdiction apply state substantive law and federal procedural law."
 13 *Freund v. Nycomed Amersham*, 347 F.3d 752, 761 (9th Cir. 2003). The principles of *Erie*
 14 also apply where the court is exercising pendant jurisdiction. *Mangold v. California Pub.*
 15 *Utilities Comm'n*, 67 F.3d 1470, 1478 (9th Cir. 1995). Accordingly *Iqbal* and *Twombly*'s
 16 pleading standards are applicable to Plaintiff's supplemental—pendent—state-law
 17 claims in Counts II, III, IV, and V.

18 Like the federal claims, Plaintiff's state-law claims allege liability—negligence as
 19 the basis in Counts II, III, and IV—as a group. (See doc. 7, ¶¶ 146-52, 159-64, 172-76.)
 20 There are no facts alleged how *each* Defendant breached a duty of care to Mr. Chavez.
 21 Merely claiming that all of the Defendants breached a duty of care because they were
 22 present on the day he died. Not *every* Defendant had a duty to place Mr. Chavez in a
 23 suicide watch, but the FAC is pleaded that way. Not *every* Defendant breached their duty
 24 of care to Mr. Chavez by not placing him in a suicide watch, but the FAC is pleaded that
 25 way. The FAC fails to allege any facts to support the negligence claim against each
 26 Defendant. See *Iqbal*, 556 U.S. at 674 (requiring a plaintiff to plead factual content that
 27 allows the court to draw the reasonable inference that the defendant is liable for the
 28

1 misconduct alleged). The Count II, III, and IV state-law claims should therefore be
 2 dismissed.

3 **2. The Count V training and supervision claims should be**
 4 **dismissed.**

5 Count V alleges that Defendants Maricopa County, Penzone, Smith, Struble, and
 6 Crutchfield are liable for the negligent hiring, training, and supervision of presumably
 7 the other Defendants.⁴ At the outset, there are no allegations of who is responsible for
 8 training and supervising whom. All of the individual Defendants seem to be Maricopa
 9 County deputy sheriffs or civilian employees. (Doc. 7, ¶¶ 16-26.) There are no
 10 allegations, and no reason to believe, that Maricopa County Correctional Health Services
 11 (“CHS”) Director Struble and CHS Medical Director Crutchfield have any involvement
 12 in the training and supervision of deputy sheriffs or sheriff department employees. CHS
 13 Director Struble and CHS Medical Director Crutchfield should therefore be dismissed
 14 from the Count V negligent training and supervision claims.

15 “An employer is liable for the tortious conduct of its employee if the employer
 16 was negligent or reckless in the hiring, supervising, or otherwise training of the
 17 employee.” *Leibel v. City of Buckeye*, 556 F.Supp.3d 1042, 1079 (D. Ariz. 2021) (citation
 18 omitted)(applying Arizona law). To state a claim for negligent supervision under Arizona
 19 law, a plaintiff must allege that the employer knew or should have known that the
 20 employee was not competent to undertake the task delegated, and the employer’s failure
 21 to supervise the employee caused injury to the plaintiff. *See Humana Hosp. Desert Valley*
 22 *v. Superior Ct.*, 154 Ariz. 396, 400 (App. 1987). The employer’s knowledge, “actual or
 23 constructive, is an essential factor in determining whether or not the [employer] exercised
 24

25
 26
 27 ⁴ The FAC also makes claims against non-parties MSCO and CHS in Count V.
 28 (Doc. 7, ¶¶ 178, 182. It is assumed this is an inadvertent holdover from the original
 Complaint.

1 reasonable care or was guilty of negligence.” *Tucson Med. Ctr. Inc. v. Misevch*, 113 Ariz
 2 4, 6 (1976).

3 In order to prevail on any of these theories, “a court must first find that the
 4 employee committed a tort.” *Kuehn v. Stanley*, 208 Ariz. 124, 130, ¶ 21 (App. 2004)
 5 (citation omitted). Once the underlying tort has been proven, the employer is liable “not
 6 because of the relation of the parties, but because the employer antecedently had reason
 7 to believe that an undue risk of harm would exist because of the employment.” *Quinonez*
 8 *for and on behalf of Quinonez v. Andersen*, 144 Ariz. 193, 197 (App. 1984) (quoting
 9 Restatement (Second) of Agency § 213, cmt. d (1952)). The claims of negligent hiring,
 10 training, supervision, and retention are theories of direct liability premised on the
 11 employer’s independent negligence and are distinct from vicarious liability claims. See
 12 *Kopp. v. Physician Group of Ariz., Inc.*, 244 Ariz. 439, 442, ¶¶ 11-12 (2018).

13 Like the § 1983 failure to train and supervise claims discussed above, Plaintiff
 14 fails to allege how the County, Crutchfield and Struble breached the duty of reasonable
 15 care in hiring, training, retaining, and supervising of the individual Defendants. Plaintiff
 16 simply recites that they breached their duty to provide adequate supervision without any
 17 details whatsoever. (Doc. 9, ¶¶ 181, 182.) Plaintiff provides no further detail, other than
 18 “as set forth above” (Id.¶ 182), which is nothing more than all of the Defendants should
 19 have known to place Mr. Chavez in suicide watch. These conclusory allegations, with no
 20 supporting factual detail, are insufficient to state a claim. *Iqbal*, 556 U.S. at 678; *see generally Ames*, 2021 WL 5578868 at *6. Baldly stating that there was inadequate
 21 training and supervision is not enough to state a claim and that is all Plaintiff essentially
 22 alleges here. The Count V training and supervision claims should therefore be dismissed.
 23

24 **3. The Estate’s Count IV negligence claim is duplicative of the**
 25 **Count V survivorship claim.**

26
 27 Arizona’s survival statute—A.R.S. §14-3110—preserves most causes of action
 28

1 for the personal representative of a deceased person except, as relevant here, pain and
 2 suffering.

3 Every cause of action, except a cause of action for damages for
 4 breach of promise to marry, seduction, libel, slander, separate
 5 maintenance, alimony, loss of consortium or invasion of the right of
 6 privacy, shall survive the death of the person entitled thereto or
 7 liable therefor, and may be asserted by or against the personal
 8 representative of such person, provided that upon the death of the
 9 person injured, damages for pain and suffering of such injured
 10 person shall not be allowed.

11 A.R.S. §14-3110. It is not a separate cause of action, but defines the parameters of the
 12 cause of action, negligence here, of a personal representative of a decedent's estate. That
 13 is, the survival statutes preserves a negligence claim for the Estate here, but bars recovery
 14 of pain and suffering. As such it is duplicative of the Count IV Negligence and Gross
 15 Negligence claim also asserted by the Estate—one of the Counts should be dismissed.

16 The survivorship Count III is also improperly asserted on behalf of Plaintiffs
 17 Debra Morales Ruiz and Alex Feorge Chavez, the decedent's mother and father. (Doc.
 18 ¶¶ 9, 10, 158.) The survival statute can only be "asserted by or against the personal
 19 representative [of the decedent]." A.R.S. §14-3110. On the contrary, "[a] wrongful
 20 death action is an original and distinct claim for damages sustained by the statutory
 21 beneficiaries and is not derivative of or a continuation of a claim existing in the
 22 decedent." *Barragan v. Superior Court of Pima Cty.*, 12 Ariz. App. 402, 4 (App. 1970).
 23 Such an action "is for the wrong to the beneficiaries, confined to their loss because of
 24 the death." *Id.* at 725. Thus, statutory beneficiaries Ruiz and Alex Chavez's sole remedy
 25 lies in Arizona's wrongful death statute.

26 **4. Maricopa County is not liable for the acts of Sheriff's
 27 Department employees.**

28 Counts II and III (and arguably IV as it is asserted against all Defendants) alleges

1 that Maricopa County is vicariously liable for the acts of its employees. (Doc 7, ¶ 153,
2 165, 171.) Under Arizona law, Maricopa County is not liable for the torts of employees
3 of the Maricopa County Sheriff's Office. *Fridena v. Maricopa County*, 18 Ariz. App.
4 527, 530 (App. 1972); *Sanchez v. Maricopa County*, 541 P.3d 566, 570, ¶ 20 (App. 2023)
5 (Applying *Fridena*; “we hold the County is not vicariously liable for the negligent
6 conduct of the Sheriff’s employees, including the Deputy Sheriff [.]”) Any vicarious
7 liability claims against Maricopa County based on the actions of Sheriff Department
8 employees should therefore be dismissed.

9

10 **5. Public entities and public employees are exempt from punitive
damages under Arizona law.**

11 Plaintiffs seek punitive damages in Counts II, III, and possibly Count IV. (Doc 7,
12 ¶¶ 157, 170, 176.) Public entities and public employees are exempt from punitive
13 damages under Arizona law. A.R.S. § 820.04. All claims of punitive damages under state
14 law should therefore be dismissed.

15

16 **III. Conclusion**

17 For the above reasons, Defendants Maricopa County, Struble, Crutchfield, Dimas,
18 Hawkins, Hertig, Martin, Montano, Moody, Park, Smith, Chester, Rainey, and Marsland
19 and former Maricopa County Sheriff Paul Penzone respectfully request that:

21

22 1. The First Amended Complaint (doc. 7) be dismissed in its entirety;

23

24 2. These Defendants be awarded their costs and attorneys’ fees as allowed by
law:

25

26 3. The Court award such other and further relief required by law.

27 **RESPECTFULLY SUBMITTED** this 20th day of February, 2024.

1 RACHEL H. MITCHELL
2 MARICOPA COUNTY ATTORNEY
3

4 By /s/ Michael E. Gottfried
5 Courtney R. Glynn
6 Michael E. Gottfried
7 Deputy County Attorneys
8 Attorneys for Maricopa County, Struble,
9 Crutchfield, Dimas, Hawkins, Hertig, Martin,
Montano, Moody, Park, Smith, Chester,
Rainey, and Marsland, Maricopa County
Sheriff Russell Skinner, and former Maricopa
County Sheriff Paul Penzone
10

11 **CERTIFICATE OF SERVICE**
12

13 I hereby certify that on February 20, 2024 I caused the foregoing document to be
14 electronically transmitted to the Clerk's Office using the CM/ECF System for filing and
15 served on counsel of record via the Court's CM/ECF system.
16

17 /s/ S. R.
18

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